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1 coworkers feared her; failed to follow her supervisors' instructions and directives; displayed  
2 inappropriate behavior in the workplace; and misused state resources.

3  
4 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084  
5 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v.  
6 Dep't of Social & Health Services, PAB No. D94-025 (1995); Anane v. Human Rights  
7 Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct.  
8 Jan. 10, 1997); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of  
9 Social & Health Services, PAB No. D93-053 (1994).

## 11 II. FINDINGS OF FACT

12 2.1 Appellant Terri Barron was a Fish Hatchery Specialist 2 and permanent employee for  
13 Respondent Department of Fish and Wildlife. Appellant and Respondent are subject to Chapters  
14 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant  
15 filed a timely appeal with the Personnel Appeals Board on January 31, 2001.

16  
17 2.2 By letter dated January 5, 2001, Lew Atkins, Assistant Director of Department of Fish and  
18 Wildlife Fish Program, informed Appellant of her immediate suspension, effective January 5  
19 through January 19, 2001, followed by her dismissal at the end of her work shift on January 19.  
20 Mr. Atkins charged Appellant with neglect of duty, inefficiency, insubordination, gross misconduct  
21 and failure to follow agency rules and procedures. Mr. Atkins specifically alleged that Appellant  
22 created a work environment in which her coworkers feared her; failed to follow supervisory  
23 directives; displayed inappropriate behavior in the workplace; and misused state resources.

1 2.3 Appellant began her employment with Fish and Wildlife in 1991. In 1993, Appellant began  
2 working at the Cowlitz Salmon Hatchery under the supervision of Vince Janson. Appellant resided  
3 in an agency-owned home on the Salmon Hatchery grounds.

4  
5 2.4 Appellant has received no prior formal discipline, however, she received the following  
6 letters of counseling/reprimand:

- 7
- 8 • A March 2, 2000 letter of reprimand addressing Appellant's unacceptable behavior and  
performance issues after she became confrontational and angry toward a coworker.
- 9 • A memorandum dated August 24, 1998 addressing Appellant's behavior and performance  
10 problems which included using profanity, confronting a utility employee, failing to operate  
equipment in a safe manner, failing to follow proper procedures for feeding fish and  
11 cleaning troughs, and failing to take lunch breaks at designated times.
- 12 • A December 3, 1997 letter of reprimand for treating a security guard in a hostile, aggressive  
and threatening manner during an incident in which Appellant grabbed the security guard by  
the coat, screamed obscenities and refused to let her go.
- 13

14 2.5 Following the incident that resulted in the December 3, 1997 letter of reprimand, the  
15 department paid for Appellant to attend anger management classes during work time. Appellant  
16 attended anger management classes for approximately six months. A memo dated August 24, 1998  
17 to all staff, including Appellant, set out expectations that staff were to conduct themselves in a  
18 professional and courteous manner at all times. The memo further indicated that "shouting, cursing,  
19 or loud abusive behavior toward others is not acceptable." Appellant was aware that she needed to  
20 modify her behavior and display professionalism in the workplace.

21  
22  
23 2.6 In March 2000, Appellant reported that her supervisor, Mr. Janson, was subjecting her to a  
24 hostile and discriminatory work environment. Respondent hired a private firm to conduct an  
25 investigation regarding Appellant's allegations. Attorney Geoffrey M. Boodell, with Sebris Busto,  
26 P.S., conducted a workplace investigation.

1  
2 2.7 Appellant requested and was granted a temporary transfer to work at the Cowlitz Trout  
3 Hatchery while an investigation into her claims was conducted. Appellant began working at the  
4 Cowlitz Trout Hatchery on March 15, 2000. Don Peterson, Complex Manager, was responsible for  
5 supervising Appellant. Larona Lavallie, Fish Hatchery Specialist 3, became her lead worker.

6  
7 2.8 Prior to beginning work at the Trout Hatchery, Mr. Peterson met with Appellant to discuss  
8 her work shift, which was scheduled to begin at 7:15 a.m. and end at 3:30 p.m. This time frame  
9 included time to travel from her residence at the Salmon Hatchery to the Trout Hatchery. Appellant  
10 was directed to report to work at the Trout Hatchery by 7:30 a.m. and to leave at 3:15 p.m. Mr.  
11 Peterson reviewed the work schedule with Appellant and directed her to request leave directly from  
12 him.

13  
14 2.9 Mr. Boodell interviewed numerous agency employees, including Appellant, regarding her  
15 claims of harassment. During the course of the interviews, Mr. Boodell discovered that Appellant's  
16 supervisors and a majority of her coworkers expressed concerns due to their observations and  
17 interactions with Appellant. They discussed numerous instances where Appellant exhibited anger  
18 and hostility in the workplace.

19  
20 2.10 Mr. Boodell issued his investigative report on September 28, 2000. Mr. Boodell did not find  
21 any credible evidence to support Appellant's claims of harassment or gender discrimination or that  
22 she was singled out by her supervisor. He found, however, that numerous employees "expressed  
23 deep concern over Ms. Barron's emotional state and their fear that she could become explosive and  
24 violent in the workplace." Mr. Boodell's report described the perception of Appellant's coworkers  
25 that she was outspoken and confrontational, had terrible anger issues and extreme mood swings.  
26 Staff also indicated that they did not want to continue working with Appellant, that she was difficult

1 to work around and that she had a “devastating effect” on their morale. Mr. Boodell interviewed  
2 Appellant on three occasions. After evaluating Appellant’s statements against the statements of her  
3 coworkers, Mr. Boodell concluded that Appellant lacked interpersonal skills, that she exaggerated  
4 events and that she saw herself as the victim.

5  
6 2.11 During his testimony before the Board, Mr. Boodell provided convincing and compelling  
7 testimony concerning Appellant’s behavior in the workplace and its negative impact on her  
8 coworkers, who did not want to continue working with Appellant. Mr. Boodell credibly testified  
9 that Appellant’s coworkers described her as “aggressive” “loud” and “abrasive.” Mr. Boodell  
10 suggested that the agency terminate Appellant.

11  
12 2.12 Vince Janson was Appellant’s supervisor immediately prior to her transfer to the Trout  
13 Hatchery. Mr. Janson, now retired, testified that Appellant “could be a pleasure to be around or  
14 impossible to communicate with.” He described Appellant as unpredictable and as frequently  
15 refusing to accept his instructions.

16  
17 2.13 Providing fish with adequate amounts of food is critical to their health and growth and to the  
18 sanitation of the fishponds. On the other hand, an over abundance of feed will fall to the bottom of  
19 the pond and create waste which harms the health of the fish. Mr. Janson spoke to Appellant on  
20 numerous occasions about her fish feeding methods after he observed her overfeeding the  
21 fishponds.

22  
23 2.14 Mr. Janson credibly testified that Appellant was a difficult employee, and he could not  
24 predict when she would become angry and argumentative with him about work performance  
25 feedback. At times Appellant was responsive to Mr. Janson’s guidance but at other times her  
26 demeanor changed, she shut him out and refused to accept responsibility for her mistakes.

1  
2 2.15 Michelle Church, a temporary employee, worked at the Salmon Hatchery when Appellant  
3 was transferred in March 2000. On May 2, 2000, Rodger Atkins spoke to staff about not  
4 overfeeding the fish. Later that day, Ms. Church observed Appellant heavily feeding the fish,  
5 which she reported to Mr. Atkins. After Mr. Atkins talked to Appellant about her failure to follow  
6 proper feeding procedures, Appellant returned to where Ms. Church was working and commented,  
7 “I don’t know who told Rodger how I was feeding, but I’ve been feeding these fucking fish longer  
8 than he’s been working here.” Appellant used the word “fuck” multiple times. Later, Appellant  
9 apologized to Ms. Church and told her, “Let’s keep this between us.” Following the incident, Ms.  
10 Church avoided working near Appellant.

11  
12 2.16 Ms. Church credibly testified that she observed Appellant angrily confronting another  
13 temporary coworker. Ms. Church described Appellant’s demeanor as loud and as becoming angry  
14 “at the drop of a hat.” Although Ms. Church did not fear that Appellant would become physically  
15 aggressive or violent, she did fear Appellant’s angry outbursts.

16  
17 2.17 Larona Lavallie was Appellant’s lead worker at the Trout Hatchery. Ms. Lavallie credibly  
18 testified about numerous occasions when Appellant engaged in angry outbursts and was defiant to  
19 her supervisory directives. On one occasion, Ms. Lavallie asked Appellant to empty one of the two  
20 lockers she was using at the Salmon Hatchery. Appellant was not pleased with Ms. Lavallie’s  
21 request, became angry and slammed the locker doors as she transferred her items from one locker to  
22 the other.

23  
24 2.18 Other coworkers also approached Ms. Lavallie about their concerns with Appellant’s  
25 aggressive and angry reactions in the workplace, which made them uncomfortable. On one  
26 occasion, Appellant accused a coworker of sabotaging her scales after he calibrated her scale on

1 July 5, 2000. Appellant became angry and argumentative and was yelling at him during the  
2 exchange. In general, new employees felt intimidated by Appellant because she reacted angrily to  
3 their feedback about her fish feeding technique. On August 2, 2000, another employee, Holly Reed,  
4 reported to Ms. Lavallie that she felt intimidated by Appellant after witnessing Appellant confront  
5 another employee.

6  
7 2.19 On June 6, 2000, Ms. Lavallie observed a vehicle on hatchery grounds pull over to the side  
8 of the road. Appellant, who was on the front passenger side, stepped out of the car and changed her  
9 shirt. Ms. Lavallie testified that from where she was standing, Appellant appeared to be nude from  
10 the waist up. However, in her statement of June 6 about the incident, Ms. Lavallie wrote that  
11 Appellant “could have had a tan bra on. She was facing the creek, so all that I could see was her  
12 bare back.” We find there is insufficient evidence to establish that Appellant inappropriately  
13 removed her shirt in a public area at the Cowlitz Salmon Hatchery.

14  
15 2.20 Mr. Janson and Ms. Lavallie had given Appellant numerous supervisory directives regarding  
16 her job performance and duties, especially with regard to the feeding of the fish. However,  
17 Appellant repeatedly failed to follow their directives. On March 20, 2000, Appellant used a  
18 steelhead picker net to pick mortality in a Coho pond after she had been directed to use a different  
19 type of net. On May 2, Appellant was “power feeding” the pond by throwing feed into the pond  
20 faster than the fish could eat it, contrary to specific instructions not to overfeed the fish. On July  
21 13, Appellant raised the level of the feed without permission

22  
23 2.21 Appellant had also been given supervisory directives concerning her work and lunch/break  
24 times. On July 11 Appellant was at the Salmon Hatchery after her work shift had ended despite  
25 previous instructions that she leave the Salmon Hatchery by 3:30 p.m. Mr. Atkins directed  
26 Appellant three times to leave the Salmon Hatchery before she agreed to leave. Appellant took

1 extended breaks and on June 26 and July 26, she failed to get prior approval to adjust her work  
2 hours after she worked beyond her scheduled end time of 3:30 p.m.. On July 17, Appellant called  
3 in sick and indicated she would call back after seeing her physician. Appellant failed to return to  
4 work and failed to call back.

5  
6 2.22 On October 16, the department requested that Appellant return all state property previously  
7 issued to her. Respondent has adopted Policy-M1217 that addresses the use of state resources and  
8 prohibits employees from “utilizing any of the state’s resources for private benefit or gain.” After  
9 reviewing the gear in Appellant’s possession, management concluded that Appellant possessed an  
10 excess of stated issued equipment. Appellant admitted keeping old equipment when she was issued  
11 replacement equipment. However, there is no evidence that Appellant was responsible for returning  
12 the old gear/equipment, that management previously directed her to return the gear, or that she  
13 retained the gear for her personal use.

14  
15 2.23 Lew Atkins, Assistant Director of the Fish Program, was Appellant’s appointing authority.  
16 After reviewing Mr. Boodell’s findings, Mr. Atkins met with Appellant on October 27 and  
17 November 3, 2000 to review and discuss the allegations. During their meeting, Appellant claimed  
18 that Mr. Boodell’s findings were false because she believed the individuals he interviewed would  
19 not have made the types of allegations outlined in the report about her or alternatively, she claimed  
20 that employees were making false claims against her. Mr. Atkins concluded that Appellant  
21 minimized many of the claims made and she attributed the anger viewed by others to her “blustery  
22 and outgoing persona.” Mr. Atkins further concluded that Appellant’s contention that others  
23 fabricated the allegations was not supported by the information presented to him.

24  
25 2.24 After reviewing Appellant’s personnel file and history, Mr. Atkins determined that  
26 Appellant had ample notice that her angry outbursts were inappropriate. In addition, he believed

1 the agency made considerable efforts to help Appellant manage her anger by sending her to anger  
2 management classes. He concluded that Appellant received appropriate training and guidance from  
3 her supervisors but failed to modify her behavior. The totality of the information Mr. Atkins  
4 reviewed painted a picture of an employee who was resistant to constructive feedback and guidance  
5 and defiant of those in authority.

6  
7 2.25 Mr. Atkins concluded that Appellant engaged in misconduct and that disciplinary action was  
8 necessary. Mr. Atkins determined that Appellant's misconduct included inappropriate displays of  
9 angry, aggressive and unpredictable outbursts in the workplace that created a work environment  
10 where her coworkers were anxious and fearful.

11  
12 2.26 In addition, Mr. Atkins concluded that Appellant understood the responsibilities of her  
13 position, had received adequate training and counseling on proper fish feeding methods but  
14 continued to ignore proper feeding methods and refused to follow supervisory guidance regarding  
15 feedings. Mr. Atkins further concluded that there was credible evidence to support that Appellant  
16 used profanity in front of coworkers, disrobed in public, and that she knocked down an employee  
17 when she acted out aggressively and angrily shoved a "crowder." Mr. Atkins determined that  
18 Appellant violated the agency's policy on misuse of state resources by possessing a large amount of  
19 agency-owned gear.

20  
21 2.27 In determining the appropriate level of discipline, Mr. Atkins considered transferring  
22 Appellant to another facility; however, he did not believe this option addressed the seriousness of  
23 her misconduct. Mr. Atkins believed that Appellant's employment history reflected that she was a  
24 catalyst for disruption and that a transfer would only have a short-term benefit. Although Mr.  
25 Atkins did not believe that Appellant would deliberately engage in a violent act, he believed that  
26 her aggressive and confrontational nature created a potential for someone being hurt or injured as a

1 result of her physically acting out in anger. Mr. Atkins concluded that the seriousness of  
2 Appellant's misconduct warranted termination because no other disciplinary sanction would have  
3 the desired effect of changing Appellant's behavior.

### 4 5 **III. ARGUMENTS OF THE PARTIES**

6 3.1 Respondent argues that Appellant created an atmosphere of fear and mistrust in the  
7 workplace, acted in an unprofessional manner and refused to accept responsibility for her actions.  
8 Respondent asserts that there is substantial evidence to support the misconduct alleged and that  
9 Appellant neglected her duty, was inefficient, insubordinate, willfully violated policy and that her  
10 misconduct constituted gross misconduct. Respondent argues that the agency made attempts to  
11 assist Appellant, including sending her to anger management classes, but that she continued to  
12 engage in inappropriate conduct. Respondent argues that Appellant's workplace behavior  
13 negatively impacted her coworkers, who were fearful of Appellant's outbursts and confrontational  
14 nature. Respondent argues that Appellant received informal counseling that addressed her  
15 inappropriate behavior and work performance problems and that she understood how to properly  
16 feed fish. Respondent argues that Appellant repeatedly failed to follow supervisory directives and  
17 became angry when performance issues were addressed with her. Respondent argues that as an  
18 employer, it had a duty to create a safe work environment for all employees and that it was  
19 necessary to remove Appellant from the work site. Respondent argues that the termination should  
20 be upheld.

21  
22 3.2 Appellant denies that she engaged in misconduct and asserts that Respondent failed to  
23 present any direct evidence that she was violent or posed a danger to anyone. Appellant asserts that  
24 Respondent relied heavily on hearsay to prove their case and that speculation and rumors do not  
25 justify dismissal. Appellant asserts that she had problems with Mr. Janson and filed numerous  
26 grievances against him, a majority of which were upheld in her favor. Appellant asserts that the

1 agency relied heavily on Mr. Boodell's investigation to support the charges she engaged in  
2 misconduct. Appellant asserts that she never threatened anyone and that no one made allegations  
3 prior to the investigation. Appellant denies that she was ever naked on hatchery property.

4  
5 Appellant asserts that there were no complaints of her failing to follow supervisory directives prior  
6 to her transfer to the Salmon Hatchery and there is no evidence to support that she did not follow  
7 orders. She further argues that there were no performance related issues of not properly feeding  
8 fish. Appellant argues that issues presented are insignificant and not worthy of discipline.  
9 Appellant further denies that she misused state resources and argues that it is not uncommon to  
10 keep old gear after it is replaced with new gear.

11  
12 Appellant argues that Respondent failed to meet its burden that she was a threat to others, that she  
13 failed to follow directives, that she behaved inappropriately or that she misused state resources. She  
14 asks that her appeal be granted.

#### 15 16 **IV. CONCLUSIONS OF LAW**

17 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
18 herein.

19  
20 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
21 the charges upon which the action was initiated by proving by a preponderance of the credible  
22 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
23 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
24 Corrections, PAB No. D82-084 (1983).

1 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
2 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
3 of Social & Health Services, PAB No. D86-119 (1987).

4  
5 4.4 Inefficiency is the utilization of time and resources in an unproductive manner, the  
6 ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of  
7 effective operations as measured by a comparison of production with use of resources, using some  
8 objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal*  
9 *dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

10  
11 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
12 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.  
13 Dep't of Social & Health Services, PAB No. D94-025 (1995).

14  
15 4.6 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
16 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

1  
2 4.7 Willful violation of published employing agency or institution or Personnel Resources  
3 Board rules or regulations is established by facts showing the existence and publication of the rules  
4 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
5 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).  
6

7 4.8 Mr. Boodell provided compelling testimony regarding his interviews with Appellant's  
8 coworkers about their discomfort, apprehensions, and fears due to Appellant's angry,  
9 confrontational and aggressive behavior in the workplace. Based on the credible testimony of Mr.  
10 Boodell, Mr. Janson, Ms. Church and Ms. Lavallie, we conclude that Appellant, more likely than  
11 not, engaged in repeated outbursts of anger and displays of aggression and hostility in the  
12 workplace, that she was disrespectful toward her coworkers and supervisors, was defiant of  
13 authority, and refused to follow directives.  
14

15 4.9 Respondent has met its burden of proof that Appellant neglected her duty to treat her  
16 supervisors and coworkers with respect and dignity. Appellant's angry outbursts were unacceptable  
17 and created an unpleasant and uncomfortable atmosphere in the workplace. Appellant's behavior  
18 was disruptive and had a negative impact on the morale of employees and rises to the level of gross  
19 misconduct. Such behavior should not be condoned in the workplace.  
20

21 4.10 Appellant was an experienced Fish Hatchery Specialist 2 and her refusal to comply with  
22 supervisory directives regarding fish feeding methods constitutes a neglect of her duty, inefficiency  
23 and insubordination. Appellant was aware of the expectations of her position and she had received  
24 appropriate training to enable her to accomplish the duties of her job.  
25  
26

1 4.11 Respondent has also met its burden of proving that Appellant failed to adhere to her work  
2 hours which constitutes a neglect of her duty and insubordination.

3  
4 4.12 Respondent has failed to prove by a preponderance of the evidence that Appellant engaged  
5 in misconduct, misused state resources or that she violated agency policy by having an “excess of  
6 hatchery state property.”

7  
8 4.13 Although it is not appropriate to initiate discipline based on prior formal and informal  
9 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
10 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.  
11 D93-163 (1995).

12  
13 4.14 In determining whether a sanction imposed is appropriate, consideration must be given to  
14 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
15 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
16 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
17 program. An action does not necessarily fail if one cause is not sustained unless the entire action  
18 depends on the unproven charge. Holladay v. Dep’t of Veterans Affairs, PAB No. D91-084 (1992).

19  
20 4.15 Although Appellant had no history of prior formal disciplinary action, her supervisors  
21 repeatedly counseled her to stop acting out angrily and to cease displaying belligerent, intimidating  
22 and aggressive outbursts in the workplace. We recognize that the department’s disciplinary letter  
23 outlines numerous charges that, when viewed in isolation, seem insignificant and not worthy of  
24 formal disciplinary action. However, when weighing the totality of proven charges to Appellant’s  
25 long history of inappropriate behavior in the workplace and her refusal to modify that behavior, we  
26

1 cannot conclude that termination is too severe. Respondent has met its burden of proving that  
2 dismissal is appropriate under the facts and circumstances. Therefore, the appeal should be denied.

3

4

**V. ORDER**

5

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Terri Barron is denied.

6

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

7

8

WASHINGTON STATE PERSONNEL APPEALS BOARD

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\_\_\_\_\_  
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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